

PARTIES

2. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized under C.R.S. § 6-1-103 to enforce the provisions of the CCPA.

3. Defendant ORLANDO MARTINEZ (“MARTINEZ”) operates a tobacco store located at 8300 E. Colfax in Denver, Colorado, doing business as O’S PIPES & TOBACCO (“O’s PIPES”). In 2014, ORLANDO MARTINEZ incorporated O’S PIPES & TOBACCO, LLC (also, “O’S PIPES”), with its principal office also listed as 8300 E. Colfax Avenue in Denver, Colorado. (O’s PIPES and MARTINEZ are collectively referred to herein as “Defendants”).

ACTS OF AGENTS

4. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation shall be deemed to mean that the principals, owners, employees, independent contractors, agents, and representatives of such Defendants performed, directed, or authorized such act or practice on behalf of said Defendants, while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

5. Pursuant to C.R.S. §§ 6-1-103 and 6-1-110, this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

6. The violations alleged herein occurred, in part, in Denver, Colorado. Therefore, venue is proper in Denver County, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2013).

RELEVANT TIMES

7. This action is timely brought pursuant to C.R.S. § 6-1-115 in that it is brought within three years of the date on which Defendants engaged in false, misleading, and deceptive acts which violate the CCPA, and the Defendants continue to engage in false, misleading acts and practices which violate the CCPA.

PUBLIC INTEREST

8. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured numerous consumers. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants’ unlawful business activities. Defendants’

deceptive and unfair business practices have also injured businesses operating legitimately and who forego the profit that can be made from the sale of spice products.

GENERAL ALLEGATIONS

I. MARTINEZ and O'S PIPES sold illegal "spice" products.

9. Synthetic cannabinoids, commonly referred to as "spice," are psychoactive chemicals dissolved in solvent, applied to plant material, and smoked as a drug of abuse. See **Exhibit A**, Tracy Murphy, M.D. et.al, *Acute Kidney Injury Associated with Synthetic Cannabinoid Use-Multiple States, 2012, Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, Vol. 62, No. 6 (Feb. 15, 2013), at 97.

10. Synthetic cannabinoids were added to the definition of a "controlled substance" under Colorado law, effective July 1, 2011. C.R.S. § 18-18-102(5).

11. "Synthetic cannabinoid" means any chemical compound that is chemically synthesized and either: (I) has been demonstrated to have binding activity at one or more cannabinoid receptors; or (II) is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors." C.R.S. § 18-18-102(34.5).

12. "Synthetic cannabinoid" includes, but is not limited to the following substances ... (III) JWH-018 ..." C.R.S. § 18-18-102(34.5)(b).

13. "[A]nalog" means any chemical that is substantially similar in chemical structure to a chemical compound that has been determined to have binding activity at one or more cannabinoid receptors." C.R.S. § 18-18-102(34.5)(d).

14. Effective July 1, 2011, the distribution of synthetic cannabinoids became a class 5 felony. C.R.S. § 18-18-406.2. The possession of synthetic cannabinoids became a class 2 misdemeanor, effective January 1, 2012. C.R.S. § 18-18-406.1.¹

15. Spice is sometimes referred to as synthetic marijuana. This is a misnomer. Although marijuana and synthetic cannabinoids affect the same part of the brain, the chemistry and the effects of synthetic cannabinoids are quite different from marijuana. Various state public health departments and poison centers have

¹ Effective July 1, 2013, the distribution of synthetic cannabinoids became a level 3 drug felony for offenses occurring after October 1, 2013. C.R.S. § 18-18-406.2. Effective July 1, 2013, the possession of synthetic cannabinoids became a level 2 drug misdemeanor for offenses occurring after October 1, 2013. C.R.S. § 18-18-406.1. The facts alleged in this Complaint occurred before these changes went into effect.

identified the adverse health effects associated with smoking synthetic cannabinoids. These effects include agitation, vomiting, tachycardia, elevated blood pressure, seizures, paranoia, hallucinations, and non-responsiveness. See Exhibit A, at 97; see also Exhibit J, *Affidavit of Chris Holmes, M.D.*, at ¶¶ 4-5.

16. In Colorado, the Rocky Mountain Poison and Drug Center (“RMPDC”) is a call center which receives medical inquiries on how to best diagnose and treat exposures to poison and drugs. RMPDC routinely receives calls about synthetic cannabinoid ingestion. See Exhibit B-*Affidavit of Sarah Bruhn, Rocky Mountain Poison and Drug Center* at ¶ 3, 5.

17. From January 1, 2011 to September 16, 2013, RMPDC received 154 calls where patients were exposed to synthetic cannabinoids in Colorado. Of these 154 patients, 69 (45%) were less than 20 years old. Twelve patients were under the age of 15, including one accidental exposure in a two-year old. More than 90% of those reporting harmful effects from spice (142 out of 154) were in a hospital when RMPDC was contacted, or were referred to a hospital for treatment. *Id.* at ¶¶6-7.

18. The majority of calls regarding patients who had ingested synthetic cannabinoids reported symptoms such as agitation/irritability, increased heart rate, drowsiness/lethargy, confusion, and hallucinations/delusions. *Id.* at ¶8.

19. RMPDC also had a cluster of five patients who attended the same party where they had smoked a spice product. All five suffered acute kidney damage. *Id.* at ¶9.

20. On February 15, 2013, the Centers for Disease Control and Prevention (“CDC”) reported that synthetic cannabinoid use has been associated with acute kidney injury after examining a cluster of 16 reported cases that occurred between March and December 2012 in six states (Wyoming, Oregon, Rhode Island, New York, Kansas). See Exhibit A.

21. The CDC found that no single synthetic cannabinoid compound explained all 16 cases of acute kidney injury. However, several of the cases involved a previously unknown synthetic cannabinoid, XLR-11. *Id.*

22. In September of 2013, Colorado experienced an unprecedented outbreak of synthetic cannabinoid exposures resulting in emergency department visits. The Colorado Department of Public Health and Environment (CDPHE) identified 221 emergency department visits occurring between 8/21/13 and 9/19/13 as associated with synthetic cannabinoids. Patient symptoms included agitation, paranoia, hallucinations and seizures. Some patients were violent, others unresponsive or even comatose. Some required intensive care unit treatment. Three deaths from this period are currently under investigation as potentially

linked to synthetic cannabinoids. See **Exhibit C**, CDPHE “Summary of a Synthetic Marijuana-Related Illness Outbreak Investigation, Colorado, 2013.”

23. An August 30, 2013, a Denver Police Department bulletin described three arrests involving violent and erratic behavior by persons who had smoked spice products (referred to as “Black Mamba”). See **Exhibit E**, Affidavit of Investigator Kenneth King, Colorado Attorney General’s Office at ¶11.

24. One of the hospitalized individuals had been arrested at a gas station after attempting to light a canister of butane gas on fire with his lighter and acting violently when the store clerk attempted to stop him. *Id.*

25. That arrested individual states that he purchased his spice from O’s Pipes & Tobacco (“O’S PIPES”) located at 8300 E. Colfax Avenue, in Denver, Colorado. O’S PIPES is also referred to as “O’s” or “Orlando’s.” See **Exhibit D**, Affidavit of William Gunn at ¶1.

26. The spice was labeled as either “Atomic Bomb” or “Atomic Blast.” The Atomic product was a leafy substance offered for sale in a small baggie. The amount was approximately one “joint” worth of smoke-able substance. *Id.* at ¶3.

27. That individual stated that he had previously purchased spice from O’S PIPES on numerous occasions and that O’S PIPES sold a variety of spice products in various packages. *Id.* at ¶2.

28. He also stated that the spice product that he purchased from O’S PIPES on August 24, 2013 gave him a completely different and terrifying experience. He described the high as “psychotic” and “uncontrollable.” He cannot remember many events from the night of his arrest, but he does recall going into the gas station and turning over product display shelves and cases. *Id.* at ¶¶4,6-7.

29. The Department of Revenue, Liquor & Tobacco Enforcement (“Department of Revenue”) had removed spice products from O’S PIPES in 2012. See **Exhibit E**, Affidavit of Investigator Kenneth King, Colorado Attorney General’s Office at ¶12.

30. On September 9, 2013, investigators from the Colorado Attorney General’s Office and the Department of Revenue conducted an undercover purchase at O’s PIPES. *Id.* at ¶¶12-13.

31. Inside O’S PIPES, those investigators observed large quantities of spice products in multi-tiered glass display cases. The spice products were placed near various smoking pipes. *Id.* at ¶15.

32. The investigators purchased two spice products, Atomic Blast and 10X. While in the store, the investigators noticed that other customers were purchasing spice products. *Id.* at ¶¶18,21.

33. Law enforcement officials removed 1,319 total packages of spice products after the undercover purchase. Based on the price tags, the retail value of the spice products is estimated at more than \$21,000.00. *Id.* at ¶23; see **Exhibit G**, DOR Evidence Inventory.

34. Four of the spice products that were removed from O's PIPES on September 9, 2013, including the two sold in the undercover buy, were tested by the Colorado Bureau of Investigation and all four tested positive for illegal synthetic cannabinoids. The 10X spice product tested positive for ADB-PINACA. The Atomic Blast spice product tested positive for XLR-11. Both chemical compounds are illegal synthetic cannabinoids under Colorado law. **Exhibit E** at ¶¶24-29; see **Exhibit H**.

II. MARTINEZ and O'S PIPES failed to disclose to consumers that their spice products were potentially illegal.

35. Defendants sold spice products to consumers without warning consumers that the contents of the packages could contain illegal synthetic cannabinoids.

36. Defendants sold spice products to consumers despite knowing the potential dangers of spice. Defendants sold spice despite hearing from their own customers about the harmful effects of the spice they sold.

37. Defendants sold spice products with an implied representation that the spice was not a controlled substance under state or federal law.

38. Defendants sold spice products in packages falsely labeled as "incense," "potpourri" or "novelty products," knowing that these products were not going to be used for any purpose other than human consumption. The false labeling was used to mask the products illegality.

39. Defendants sold spice with supposed warnings such as "not for human consumption." Defendants knew that this language is commonly associated with spice and Defendants knew that the product would be abused and smoked as a mind altering substance.

40. MARTINEZ claims he relied upon out of state lab reports stating that the spice products he sold were legal. MARTINEZ states he received these lab reports from distributors of the spice he purchased. **Exhibit F**, *Orlando Martinez, Tr. 71:5-72:17 (Sept. 13, 2013)*. **Exhibit M**, *AI Bio Tech & RTP Labs documents*.

41. The lab reports upon which MARTINEZ claims he relied contain disclaimers such as; “This report is not a certification of the legality or safety of the product” and “It is recommended that an attorney be consulted for advice on the legality of the product tested.” Exhibit M, *AI Bio Tech & RTP Labs documents*.

42. The Colorado Bureau of Investigations tested the products that the investigators purchased during the undercover operation. The 10X spice product tested positive for ADB-PINACA. The Atomic Blast spice product tested positive for XLR-11. Both chemical compounds are illegal synthetic cannabinoids under Colorado law. Exhibit E at ¶¶24-29; see Exhibit H, *Colorado Bureau of Investigations Lab Report*.

43. The packaging for 10X states “This product does not contain any substances on any ban list state or federal.” Under Colorado law, all synthetic cannabinoids are banned. The labeling on the 10X spice product was deceptive, because the spice product did contain a synthetic cannabinoid, ADB-PINACA.

44. Possession of illegal synthetic cannabinoid compounds is a Class 2 Misdemeanor. The deceptive labeling on the 10X spice product presented the product as legal and did not warn consumers that the contents were illegal.

45. Defendants sold spice products in professional packaging that provided no warning that the spice products were potentially illegal. Defendants prominently displayed the spice products for sale along with other legal items.

46. Defendants sold at least 56 different spice products. None of the spice products warned consumers that the contents were illegal or potentially illegal. To the contrary, most of the labeling deceptively suggested that the spice products were legal. The labeling included phrases such as:

- a) “This product complies with all federal and state legislation;”
- b) “Legal under the new Florida law;” and
- c) “In accordance with docket DEA-373.” See Exhibit L, Spice products removed from O’s PIPES; See Exhibit G, DOR Evidence Inventory.

III. MARTINEZ and the O’S PIPES failed to disclose to consumers that their spice products came with a great risk of adverse health consequences.

47. The spice products sold by MARTINEZ and O'S PIPES were potentially harmful to consumers. Defendants could not know exactly what chemicals were sprayed onto the spice products they sold. None of the packaging accurately discloses what chemical compounds were applied to the dried plant material.

48. During his Civil Investigative Demand ("CID") depositions, MARTINEZ gave testimony which showed that he knew that spice products were not safe, including the following;

- a) MARTINEZ saw news reports about the August 2013 outbreak which informed him that people were getting sick from spice products, including a brand of spice product called Crazy Clown. The only action he took was to return the Crazy Clown spice product to the vendor. He continued to sell spice products right up until the products were removed by law enforcement on September 9, 2013. Exhibit F, Orlando Martinez, Tr. 118:11-121:17 (Sept. 13, 2013).
- b) MARTINEZ was aware that other spice products in the past had made people sick, caused them to be hospitalized, and in some cases had caused death. *Id.* at 73:1-22.
- c) MARTINEZ knew that his customers smoked the spice products he sold for their effect. *Id.* at 37:6-20.

49. The store manager for O'S PIPES testified that the store continued to sell the 10X spice products, through the 2013 synthetic cannabinoid outbreak, even though customers had reported the product was unusually strong, made them feel sick, and caused them to vomit. One customer told him that he felt like he couldn't move after he smoked 10X. Exhibit I, Tyler James, Tr. 87:5-15 (Oct. 9, 2013).

50. The store manager for O'S PIPES also testified that the store sold spice products to a wide customer base. The store owner states that it was commonly known that people smoke the spice products to get high. Many customers were individuals who were subject to drug-testing as part of their jobs or as part of a criminal sentence to probation. *Id.* at 46:7-53:10.

51. By placing spice products alongside accessories for smoking the spice products, MARTINEZ and O'S PIPES clearly promoted the products to consumers as being intended for consumption.

52. Defendants sold spice products for human consumption with language that masked the known purpose of the spice products. The language is employed

solely as an attempt to avoid criminal prosecution, civil liability and federal regulations regarding disclosure of ingredients.

53. MARTINEZ testified that he has personally affixed “aromatic incense” labeling on spice products and that he knows that such labeling does not make sense in light of the fact that he is selling it as a product to be smoked. **Exhibit F**, *Orlando Martinez, Tr. 108:18-109:8 (Sept. 13, 2013)*.

54. Despite knowledge that spice products are potentially harmful to consumers, Defendants sold their spice products without any accurate disclosures of what chemicals were actually present in the spice product.

55. Neither MARTINEZ nor O’S PIPES, nor the packaging of the products they sold, advised consumers about what chemicals were sprayed on the spice products. Neither MARTINEZ nor O’S PIPES, nor the packaging of the products they sold, disclosed to the consumer that the chemicals were unknown and potentially dangerous.

56. The 10X spice product packaging was particularly misleading because it advised consumers that it did not contain any banned substance, when in fact, it contained ADB-PINACA, a banned synthetic cannabinoid that was linked to the August 2013 synthetic cannabinoid outbreak. See **Exhibit E**, Affidavit of Investigator Kenneth King, Colorado Attorney General’s Office; **Exhibit L**, Spice products removed from O’s PIPES. See **Exhibit K**.

57. The prominent display, the professional packaging, the wording on the packages, and the open sale of such products at a public store, misled consumers to believe that the spice products were legal and safe.

FIRST CLAIM FOR RELIEF

C.R.S. § 6-1-105(g)

58. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 57 of this Complaint.

59. MARTINEZ and O’S PIPES presented and sold spice products to consumers as if they were legal and safe, when they were not. Defendants were, at a minimum, reckless in making these claims as they could not be sure of these claims. Furthermore, it is likely that Defendants had knowledge, or at least reason to know, that the products they sold were not legal and safe.

60. Defendants marketed and sold products to consumers as if they were legal and safe when they had no knowledge as to what chemicals were sprayed on the spice products. Defendants failed to determine what was contained in their

products. The actual ingredients, which included synthetic cannabinoids, placed consumers at obvious risk for potential health problems and physical injury.

61. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers while taking away sales from lawfully acting business.

SECOND CLAIM FOR RELIEF

C.R.S. § 6-1-105(e).

62. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 61 of this Complaint.

63. MARTINEZ and O'S PIPES sold spice products with labels that falsely represented that the spice products they sold were for purposes other than consumption. Defendants knew that their products would not be used as incense, novelties, or potpourri and instead would be ingested.

64. Defendants failed to provide accurate ingredient information while representing that the ingredients used in their produces were safe and legal.

65. Defendants made false representations as to the benefits of their product including the misrepresented benefit that purchasers would not be in possession of an illegal controlled substance.

66. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

THIRD CLAIM FOR RELIEF

C.R.S. § 6-1-105(u)

69. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 –66 of this Complaint.

70. Defendants failed to disclose that the spice products they were selling might contain synthetic cannabinoids or other chemicals that could cause adverse health effects when ingested.

71. Defendants failed to disclose the contents and ingredients of the spice products they sold.

72. Defendants failed to disclose their lack of safeguards and quality control that would ensure the products they sold did not contain illegal controlled and dangerous substances.

73. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

FOURTH CLAIM FOR RELIEF

C.R.S. § 6-1-105(b)

74. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 73 of this Complaint.

75. MARTINEZ and O'S PIPES sold spice product with labels that stated the product was legal, without basis, and misrepresented their spice products as legal and safe.

76. MARTINEZ and O'S PIPES sold spice products to consumers through the use of professional packaging and placement with other legal smoking products to falsely represent that the spice products were legal and safe.

77. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against Defendants and for the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the CCPA, C.R.S. § 6-1-105 (1) (g), (u), (e) and (b).

B. An order preliminarily and permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from selling spice products and engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Additional appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to § 6-1-110(1), C.R.S. (2012).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, maximum civil penalties in an amount not to exceed \$2000

per violation pursuant to § 6-1-112(1)(a), C.R.S. (2013), or \$10,000 per violation pursuant to § 6-1-112(1)(c), C.R.S. (2013).

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to § 6-1-113, C.R.S. (2013).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 7th day of May, 2014.

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